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VERIGY US, INC.

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION

13 | VERIGY US, INC, a Delaware Corporation,

14 Plaintiff,

15 || vs.

16 ROMI OMAR MAYDER, an individual;
17 WESLEY MAYDER, an individual; SILICON
18 TEST SYSTEMS, INC., a California Corporation;
and SILICON TEST SOLUTIONS, LLC, a
California Limited Liability Corporation,
inclusive,

Defendants.

Case No. C07 04330 RMW (HRL)

**VERIGY'S NOTICE OF MOTION AND
MOTION FOR PROTECTIVE ORDER
RELIEVING VERIGY OF DUTY TO
RESPOND FURTHER TO SECOND
AMENDED NOTICE OF RULE 30(b)(6)
DEPOSITION PROPOUNDED BY
DEFENDANTS; SUPPORTING
MEMORANDUM OF POINTS AND
AUTHORITIES [Fed.R.Civ.P. 26(c)(1) and
37]**

Date: September 30, 2008
Time: 10 a.m.
Ctrm.: 2, 5th Floor
Judge: Hon. Howard R. Llo

Complaint Filed: August 22, 2007
Trial Date: None Set

25 || AND RELATED CROSS-ACTIONS

NOTICE OF MOTION AND MOTION

TO DEFENDANTS AND THEIR ATTORNEYS OF RECORD:

3 PLEASE TAKE NOTICE that, on Tuesday, September 30, 2008, at 10:00 a.m., or as soon
4 thereafter as the matter may be heard, before the Hon. Howard R. Lloyd, United States Magistrate
5 Judge, Courtroom 2, 5th Floor, of the United States District Court for the Northern District of
6 California, San Jose Division, 280 South First Street, San Jose, California, plaintiff Verigy U.S.,
7 Inc. (“Verigy”), shall and hereby does move the Court for a protective order relieving Verigy of
8 the duty to respond further to Defendants’ Second Amended Notice of Rule 30(b)(6) Deposition
9 of Verigy US, Inc. (“Second Amended Depo Notice”) except insofar as Verigy has already agreed
10 to produce a corporate witness on certain topics in the Second Amended Notice, subject to
11 objections.

12 The motion is made pursuant to Rules 26(c)(1) and 37 of the Federal Rules of Civil
13 Procedure on the grounds that good cause exists for issuance of an order forbidding the
14 aforementioned deposition questioning on certain topics to protect Verigy from annoyance,
15 oppression, harassment, undue burden and expense.

16 The motion is based upon this notice of motion and motion, the supporting memorandum
17 of points and authorities, the declaration of Michael W. Stebbins, the complete files and records in
18 this action, and such additional evidence and argument as may hereinafter be presented.

STATEMENT OF ISSUES

(N.D. Cal. Civil L.R. 7-4)

21 1. Should a protective order issue relieving Verigy of the duty to respond further to
22 Defendants' Second Amended Notice of Rule 30(b)(6) Deposition of Verigy, US, Inc.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

25 Defendants have propounded a corporate deposition notice to Verigty with nominally 39
26 separate topics. (See, Declaration of Michael W. Stebbins (“Stebbins Decl.”), ¶ 4 and Ex. C (copy
27 of Second Amended Depo Notice”).) However, this notice includes not only these 39 topics, but
28 literally dozens of subparts and some 78 complicated defined terms, resulting in a notice that

1 involves *more than a thousand different potential topics*. Compounding Verigy's burden,
 2 Defendants propounded the Second Amended Depo Notice on August 15, 2008 while setting the
 3 deposition to commence on August 22, providing *only one week's notice*. In addition to the
 4 burden imposed by volume and short notice, many of Defendants proposed topic areas are
 5 inappropriate for a Rule 30(b)(6) deposition, and violate the attorney work product doctrine. The
 6 "contention" style of many of the topic areas make them better suited for written discovery, and
 7 unreasonable for corporate deposition testimony. In sum, the scope, breadth, nature and timing of
 8 these topics is enormous and it is unreasonable and inappropriate for Verigy to prepare and then
 9 provide witnesses in this fashion.

10 The Second Amended Depo Notice is clearly calculated for harassment purposes and the
 11 meet and confer process has not been successful in creating a more reasonable corporate
 12 deposition notice. Notwithstanding these issues, Verigy has, however, agreed to provide four (4)
 13 separate witnesses to testify for a full seven (7) hour day each as to the bulk of the topics, as
 14 limited by Verigy's objections. This is, and should be deemed to be sufficient, and it would be
 15 improper for Defendants to obtain through Verigy's deposition what it failed to obtain through
 16 more appropriate means. Accordingly, as discussed more fully below, entry of a protective order
 17 precluding any further production of corporate witnesses or testimony is warranted.

18 **II. PROCEDURAL BACKGROUND**

19 On August 4, 2008, Defendants propounded a Notice of Rule 30(b)(6) Deposition of
 20 Verigy US, Inc. (Stebbins Decl., ¶ 2 and Ex. A). The document is some 50 pages in length and
 21 includes 155 enumerated deposition topics. Because of lengthy, complicated and confusing
 22 subparts, both explicit and implicit, as well as nearly 80 defined terms, this notice actually
 23 comprises thousands of topics.

24 On August 7, 2008, after a telephone call in which Verigy's discomfiture with the original
 25 30(b)(6) notice was expressed due to its length, overbreadth and complexity, Defendants
 26 propounded an Amended Notice of Rule 30(b)(6) Deposition of Verigy US, Inc. (Stebbins Decl.,
 27 ¶ 3 and Ex. B). The document is 32 pages in length and includes 41 enumerated deposition topics,
 28 but, still, because of subparts, both explicit and implicit, as well as the same complicated

1 definitions, comprises thousands of topics.

2 On August 15, 2008, Defendants propounded their Second Amended Depo Notice, which
 3 is the currently operative document. (Stebbins Decl., ¶ 4 and Ex. C). The Second Amended Depo
 4 Notice is 29 pages in length and includes 39 enumerated topics (38, since Deposition Topic No. 30
 5 is blank), but, still, because of subparts, both explicit and implicit, as well as the same complicated
 6 definitions, *still* comprises thousands of topics.

7 Counsel met and conferred regarding the Second Amended Depo Notice as well as the
 8 previous incarnations. (Stebbins Decl., ¶ 5 and Ex. D) (copies of meet-and-confer
 9 correspondence). Verigy has also served objections to the Second Amended Depo Notice. (*Id.* ¶ 6
 10 and Ex. E.) Nevertheless, Verigy has agreed to designate four (4) separate corporate witnesses,
 11 for up to seven hours each, on most of the topics indicated. (*Id.*, ¶ 7 and Ex. F.) However,
 12 Defendants have still asked Verigy to withdraw its objections and provide more witnesses and
 13 allow for more questioning. Because the meet and confer process has been unsuccessful, Verigy
 14 has been compelled to bring this motion for a protective order to prevent any further questioning.

15 **III. DISCOVERY IN DISPUTE**

16 The discovery in dispute is Defendants' Second Amended Depo Notice. (*See*, Stebbins
 17 Decl., ¶ 4 and Ex. C.)

18 Deposition Topic No. 1 demands that Verigy produce a corporate witness to testify *not on*
 19 *one single topic*, but instead to answer 36 explicit subparts (covering 4 pages of text with
 20 numerous defined terms) and to do so *not once, but repeatedly*, “for each of the ALLEGED
 21 TRADE SECRETS.” (*See*, Stebbins Decl., ¶ 4 and Ex. C, at pp. 20-23.) Thus, the actual number
 22 of deposition topics in Deposition Topic No. 1 alone could be said to be 36X (where “X” equals
 23 the number of alleged trade secrets, some 35 altogether),¹ or *twelve-hundred-sixty (1260) total*.

24 Many of the other deposition topics, for example, Deposition Topics 2, 3, 4, 5, 7, 12, and
 25 16, are likewise not on one single topic but instead a multiple of “X” because they are phrased so

26
 27 ¹ *See* Plaintiff's Amended C.C.P. § 2019.210 Disclosure (Exhibit I to Stebbins Declaration).

1 as to require information “for each of the ALLEGED TRADE SECRETS.” (See, Stebbins Decl., ¶
 2 4 and Ex. C, at pp. 23-26.)²

3 Deposition Topic No. 4 contains a multiple of 2X, or 70 separate topics, because, “for each
 4 of the ALLEGED TRADE SECRETS” it requires (1) identification of the person involved in
 5 conceiving the trade secret and (2) the period of time during which each such person was involved
 6 in such conception. (See, Stebbins Decl., ¶ 4 and Ex. C, at p. 23.)³

7 Deposition Topic No. 5 contains a multiple of 9X, or 315 separate topics. (See, Stebbins
 8 Decl., ¶ 4 and Ex. C, at p. 23.)

9 Deposition Topic No. 6 has two major explicit subparts, 6(A) and 6 (B), each taking up
 10 literally half a page of text. Each also has seven explicit lettered subparts, (a) through (g). (See,
 11 Stebbins Decl., ¶ 4 and Ex. C, at p.24.) Thus, Deposition Topic No. 6 is in actuality 14 different
 12 deposition topics. Likewise Deposition Topics 23 and 29 have two major express subparts, 23(A)
 13 and 23(B). (*Id.*, at p.27).

14 Deposition Topic No. 7 contains a multiple of 11X, or 385 separate topics. (See, Stebbins
 15 Decl., ¶ 4 and Ex. C, at p. 24.)

16 Deposition Topic No. 8 has 10 lettered subparts, and thus is actually 10 different
 17 deposition topics. (See, Stebbins Decl., ¶ 4 and Ex. C, at p.25.)

18 Deposition Topic No. 11 has 15 lettered subparts, multiplied by “X” for “any ALLEGED
 19 TRADE SECRETS.” (See, Stebbins Decl., ¶ 4 and Ex. C, at pp. 25-26.) Thus, Deposition Topic
 20 No. 11 is actually 525 different deposition topics.

21

22 ² Deposition Topics No. 2 and 3 share this problem and, additionally, are *hopelessly*
 23 *incoherent and inherently unanswerable by a human witness acting as a corporate designee*.
 24 Deposition Topic No. 2: “All of the specific ways, if any, in which each of the ALLEGED
 25 TRADE SECRETS are *not* fully described in pages 1-7 and that portion of page 8 including only
 26 numbers paragraphs [0032]-[0045] of page of deposition exhibit 120 in this LAWSUIT.” (See,
 27 Stebbins Decl., ¶ 4 and Ex. C, at p. 23) (emphasis added). Deposition Topic No. 3: “All of the
 28 specific ways, if any, in which each of the ALLEGED TRADE SECRETS allegedly described in
 Parts 2(a)-(f) of the VERIGY TRADE SECRET LIST is not fully described in the patent
 disclosures listed in Parts 2(a)-(f) of the VERIGY GRADE SECRET LIST. Such topics are far
 more susceptible of contention interrogatories.”

³ This, of course, reads more like an interrogatory than a deposition topic, and more
 appropriately should have been propounded as an interrogatory.

1 Deposition Topic No. 13 contains three different topics, related to disclosures to Verigy by
 2 (1) Micron, (2) Toshiba and (3) Honeywell. (*See*, Stebbins Decl., ¶ 4 and Ex. C, at p. 26.)

3 Deposition Topic No. 14 seeks a witness to testify regarding the factual bases of 59
 4 different paragraphs in the Complaint, and is thus 59 different deposition topics. (*See*, Stebbins
 5 Decl., ¶ 4 and Ex. C, at p. 26.)

6 Deposition Topic No. 19 seeks a witness to testify regarding the factual bases of 10
 7 different interrogatory responses made by Verigy, and is thus 10 different deposition topics. (*See*,
 8 Stebbins Decl., ¶ 4 and Ex. C, at p. 27.) Likewise, Deposition Topic No. 20 seeks a witness to
 9 testify regarding the factual bases of 28 different responses to requests for admission by Verigy,
 10 and is thus 28 different deposition topics. (*Id.*) Both of these topics are inappropriate,
 11 burdensome and premature, since the interrogatory and admissions responses at issue in these
 12 topics are not due until the last day of discovery which is the last day Verigy has agreed to provide
 13 a 30(b)(6) witness. Thus, Defendants want Verigy to prepare and provide a witness about written
 14 discovery responses before those responses have even been finalized or served.

15 Deposition Topics 15, 22 and 34 are essentially duplicative of each other, seeking
 16 information about Verigy's alleged damages, but stated in different words. (*See*, Stebbins Decl., ¶
 17 4 and Ex. C, at pp. 26-27.)

18 Deposition Topic No. 24 actually contains six different topics, and Deposition Topic No.
 19 26 another three different topics. (*See*, Stebbins Decl., ¶ 4 and Ex. C, at p. 27.)

20 Deposition Topic No. 27 contains five express lettered subparts containing separate
 21 deposition topics. (*See*, Stebbins Decl., ¶ 4 and Ex. C, at p. 28.)

22 Deposition Topics No. 33 and 37 contains two lettered subparts with separate deposition
 23 topics. (*See*, Stebbins Decl., ¶ 4 and Ex. C, at pp. 28-29.)

24 Deposition Topic No. 35, as phrased, in actuality contains potentially ninety-eight hundred
 25 (9800) topics: “[Five items] of any version of [seven items] for any [eight items] relating to any
 26 VERIGY TRADE SECRET [*i.e.*, 35 separate items].” (*See*, Stebbins Decl., ¶ 4 and Ex. C, at pp.
 27 28-29.)

28 Finally, the last deposition topic, Deposition Topic No. 39, is a mishmash of merely 5

1 different topics. (See, Stebbins Decl., ¶ 4 and Ex. C at p.29). Thus, the total number of topic areas
 2 requested by Defendants of Verigy, could be said to be twelve-thousand five hundred and eighty-
 3 four (**12,584**).

4 **IV. ARGUMENT**

5 Rule 26(c)(1) of the Federal Rules of Civil Procedure pertinently provides:
 6 A party or any person from whom discovery is sought may move for a protective
 7 order in the court where the action is pending....The court may, for good cause,
 issue an order to protect a party or person from annoyance, embarrassment,
 oppression, or undue burden or expense, including one or more of the following:

- 8 (A) forbidding the disclosure or discovery;
- 9 (B) specifying terms, including time and place, for the disclosure of discovery;
- 10 (C) prescribing a discovery method other than the one selected by the party
 seeking discovery;
- 11 (D) forbidding inquiry into certain matters, or limiting the scope of disclosure or
 discovery to certain matters;

12 * * * *

13 Fed.R.Civ.P. 26(c)(1).

14 “[U]nder Rule 26(c), the court may prevent a party from wasting its opponent’s time and
 15 thereby causing undue burden and expense.” *Tri-State Hospital Supply Corp. v. U.S.*, 226 F.R.D.
 16 118, 126 (D.D.C. 2005). The federal discovery rules “preclude proponents of discovery from
 17 wielding the discovery process as a club by propounding requests compelling the recipient to
 18 assume an excessive burden. Consequently, the recipient of a Rule 30(b)(6) request is not
 19 required to have its counsel muster all of its factual evidence to prepare a witness to be able to
 20 testify regarding a defense or claim.” *Smithkline Beecham Corp. v. Apotex Corp.*, No. 98 C3952,
 21 2000 WL 116082 at *9 (N.D. Ill. Jan. 24, 2000) (internal citations omitted).

22 “[P]roper use of the Rule 30(b)(6) mechanism is a two-way street. The discovering party
 23 must take reasonable steps to spell out and *confine* the definition of topics to be covered so that the
 24 preparation burdens imposed on the responding entity remain reasonable.” Kent Sinclair & Roger
 25 P. Fendrich, Discovery Corporate Knowledge and Contentions: Rethinking Rule 30(b)(6) and
 26 Alternative Mechanisms, 50 Ala. L. Rev. 651, 663 (1999) (emphasis added).

1 **A. THE TOPICS ARE OVERBROAD AND UNDULY BURDENSONE**

2 In this case, Verigy has good cause to seek a protective order pursuant to Rule 26(c)(1)
 3 with respect to the Second Amended Depo Notice. As mentioned above, the notice nominally
 4 contains 39 topics (38 since Topic No. 30 has been deleted) for Verigy's corporate designees.
 5 This alone would be quite burdensome, but in reality the Second Amended Depo Notice contains
 6 numerous subparts, both explicit and implicit, as well as nearly 80 definitions, many of which are
 7 quite complicated, which cause the actual number of topics to number in the *several thousands*
 8 (12,584, if every sub-part is accounted for and multiplied).

9 Further, Defendants' Second Amended Depo Notice demands that witnesses on each of
 10 these hundreds of topics be identified, prepared and produced *within a week!* The Second
 11 Amended Depo Notice is dated August 15, 2008 yet demands the corporate deposition commence
 12 a week later on August 22. (*See, Stebbins Decl., ¶ 4 and Ex. C, at p.2.*) Commencement of the
 13 deposition has, however, been continued to August 26, 2008 giving Verigy a nominal reprieve to
 14 prepare. Although short notice was necessitated to some degree because of the impending
 15 discovery deadline of August 29, 2008, Defendants have only themselves to blame for these
 16 circumstances in waiting until August 2008 to first seek a Rule 30(b)(6) deposition of Verigy.
 17 Moreover, as a practical matter, preparing designated witnesses to testify not only as to what they
 18 know or recall but also the corporation's collective knowledge and formal position on the
 19 hundreds of topics demanded is, as should be self-evident, essentially impossible and absurd.⁴

20 There can be little argument that the Second Amended Depo Notice is unduly burdensome
 21 and warrants imposition of a protective order pursuant to Fed.R.Civ.P. 26(c)(1). *Put simply, there*
 22 *are far too many topics which are far too complicated s on far too short of notice.*⁵ Verigy has
 23 agreed to produce four witnesses, for seven hours each, related to 33 of the 38 nominal topics

24
 25 ⁴ Indeed, the length, breadth and complexity of Defendants' original 30(b)(6) notice is
 26 almost absurd, the likes of which Verigy's counsel has never seen before. The Second Amended
 27 Depo Notice is little better. Defendants' 30(b)(6) notices are in stark contrast to Verigy's which
 28 contains some 29 easily understandable, narrowly tailored topics. (*See Stebbins Decl. at Ex. J.*)

⁵ Further, Verigy has already answered numerous interrogatories on the same subject matter.
 (See, Stebbins Decl., ¶ 8, Ex. G, H.)

1 demanded.⁶ (See, Stebbins Decl., ¶ 6 and Ex. E.) Verigys designation of those individuals is
 2 subject to its objections and this motion for protective order. Verigys should not be required to do
 3 anything more.

4 **B. BY ITS 30(b)(6) NOTICE, DEFENDANTS SEEK TO CIRCUMVENT THE
 5 COURT'S ORDER LIMITING INTERROGATORIES AND TO INVADE
 6 VERIGY'S PRIVILEGES**

7 Defendants' notice of Verigys deposition pursuant to Fed.R.Civ.P. 30(b)(6) is, in addition
 8 to being a none too subtle attempt to harass, annoy and burden Verigy, a thinly veiled and
 9 impermissible attempt to shift discovery obligations from Defendants to Verigy. This violates
 10 discovery procedure and discovery privileges. Defendants are not permitted to use the corporate
 11 deposition provision of the Federal Rules of Civil Procedure to require Verigy to "marshall all of
 12 its factual proof" and provide it to them. To do so uses the wrong discovery tool and invades the
 13 attorney-client and work product protections. *In re Independent Service Organizations Antitrust
 14 Litigation*, 168 F.R.D. 651, 654 (D. Kan. 1996). The proper discovery tool for such inquiries in
 15 complex intellectual property litigation is not the bright light of deposition, but contention
 16 interrogatories. *McCormick-Morgan, Inc. v. Teledyne Industries, Inc.*, 134 F.R.D. 275, 286 (N.D.
 17 Cal. 1991); reversed on other grounds in *McCormick-Morgan, Inc. v. Teledyne Industries, Inc.* 765
 18 F.Supp. 611 (N.D.Cal.,1991)." Moreover, because they failed to serve proper contention
 19 interrogatories, Defendants' back door attempt to circumvent this Court's May 24, 2008 discovery
 20 order limiting interrogatories to 25 (from that date) should not be permitted through Fed.R.Civ.P.
 30(b)(6).⁷

21 In *McCormick*, a complex patent litigation case, plaintiff attempted to use Fed.R.Civ.P.
 22 30(b)(6) to designate a witness to testify for the defendant corporation regarding all bases for
 23 contentions made – including affirmative defenses. As in this case, the designating party was

24
 25 ⁶ Verigys also will produce a witness to testify, with reasonable particularity, about its trade
 26 secrets which are the subject of this lawsuit, thereby giving Defendants all they could reasonably
 27 be entitled to with respect to Topic No. 1 of the Second Amended Depo Notice. (Stebbins Decl. ¶
 28 7.)

⁷ Defendants have served in excess of 25 interrogatories, including sub-parts, since that date.
 (Stebbins Decl., ¶ 8, Ex. G, H.)

1 concerned that defendants were attempting to create a record for trial purposes and to limit
 2 evidence introduced at trial. As in this case, the designating party also had pretrial concerns
 3 whether it was possible to designate “a human being” capable of so testifying. Magistrate Judge
 4 Brazil agreed with both concerns. *Id.* at 286-287. Judge Brazil held that to obtain such discovery
 5 on the bases for contentions, use of “contention” interrogatories was the more appropriate vehicle,
 6 because of the highly complex nature of patent litigation. *See also Independent-Services Org.*,
 7 168 F.R.D. at 654; *CG Roxanne LLC v. Fiji Water Co.*, No. C07-02258 RMW (HRL), 2008 WL
 8 227 6403 (N.D. Cal. May 30, 2008), at *5; *See Smithkline Beecham*, 2000 WL 116082, at *9 (“the
 9 recipient of a Rule 30(b)(6) request is not required to have its counsel muster all of its factual
 10 evidence to prepare a witness to be able to testify regarding a defense or claim”).

11 In *Independent-Service Org.*, plaintiff asked defendant to designate a corporate witness to
 12 testify to all facts supporting paragraphs of its answer and affirmative defenses. The court noted
 13 that use of a Rule 30(b)(6) deposition is not the right tool for such discovery. Rather, contention
 14 interrogatories are. This is because overbroad deposition topics “implicates serious privilege
 15 concerns.” *See* 168 F.R.D. at 654. *See also United States v. District Council of NYC*, No. 90 CIV.
 16 5722 (CSH) 1992 WL 208284, at *15 (S.D.N.Y. Aug. 18, 1992).⁸

17 Similarly, in *Smithkline Beecham*, a party’s attempt to use Rule 30(b)(6) to depose a
 18 corporation on its answers to interrogatories and requests for production was inappropriate. *See*
 19 2000 WL 116082, at *9. Because answering such discovery involves assistance of counsel, the
 20 topic invaded the attorney-client privilege and attorney work product protections. The designating
 21 party “could readily have obtained the same information” through interrogatories to “obtain the
 22 same information with infinitely less intrusion upon privilege concerns, in a more workable form,
 23 and from the individuals who have actual knowledge of the matters at issue.” *Id.*

24 The result should be no different here. Defendants have attempted, by and through their
 25 thirty-nine (or, perhaps, more appropriately, 12,584) deposition topics, to circumvent this Court’s

27 ⁸ Defendants ask the same of Verigy here regarding its Complaint and discovery responses
 28 in Topics 14, 19-20, 34 and 36.

1 discovery order and have Verigy “muster all of its factual evidence to prepare a witness to be able
 2 to testify” about all its claims in this case. *Id.* Defendants deposition topics seek to shift to Verigy
 3 their burden of collecting and gathering evidence, by use of an incorrect discovery tool.

4 For example, in Topic No. 14, Defendants seek “the factual bases,” for Verigy’s
 5 allegations in 59 different paragraphs of the Complaint. In Topic No. 1, there are 36 different
 6 topic areas focused on Verigy’s trade secrets. In Topic No. 36, Defendants actually ask Verigy to
 7 prepare and provide a witness as to an affirmative defense (Defendants’ assertion that Verigy’s
 8 trade secrets are “READILY ASCERTAINABLE BY PROPER MEANS”), when it is Defendants
 9 which have the burden of proof on such topic. Providing testimony on all of these topics unfairly
 10 invades the attorney-client privilege and work product doctrine. Moreover, “no human being”
 11 could or should be required to testify at deposition as to all of the bases for or nuances of Verigy’s
 12 trade secrets, every other factual assertion in its complaint, or the basis for its discovery responses.

13 Notwithstanding the foregoing, Verigy will be producing four (4) separate witnesses
 14 (someone in finance, marketing, and two in R&D, with all but the finance witness having also
 15 been personally involved in the matters that form the basis of this lawsuit) on the bulk of the
 16 topics listed in the Second Amended Depo Notice and allowing each of these witnesses to be
 17 questioned for up to 7 hours, all subject to Verigy’s objections and this motion. (*See*, Stebbins
 18 Decl., ¶ 7.) Under the circumstances, Verigy submits that this is more than reasonable or
 19 appropriate. Verigy thus requests a protective order to limit the scope of Defendants 30(b)(6)
 20 deposition and to ensure that it need do nothing more than it has already agreed to do.

21 **V. CONCLUSION**

22 For the foregoing reasons, Verigy respectfully requests that the Court grant its motion for
 23 protective order relieving plaintiff Verigy of the duty to provide further testimony in connection
 24 with Defendants’ Second Amended Notice of Rule 30(b)(6) Deposition of Verigy US, Inc..

25 Dated: August 25, 2008

BERGESON, LLP

26

By: _____ /s/

27 Michael W. Stebbins

28

Attorneys for Plaintiff
 VERIGY US, INC.